



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

JOHN THOMAS CLARK,
Plaintiff,

vs.

HORRY COUNTY SOUTH CAROLINA
SHERIFF'S OFFICE, and PFC J. MORALES
Defendants.

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CIVIL ACTION NO. 9:17-00742-MGL

ORDER ADOPTING THE REPORT AND RECOMMENDATION

In his Complaint, John Thomas Clark (Plaintiff) brought claims against Defendants Horry County Sheriff's Office (HCSO) and Pfc J. Morales (Morales) (collectively Defendants) for violation of 42 U.S.C. § 1983 and 42 U.S.C. § 1988, and against HCSO for violation of the South Carolina Tort Claims Act (SCTCA). ECF No. 1. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge. The Magistrate Judge recommends HCSO and Morales in his official capacity be dismissed with prejudice from Plaintiff's claim under 42 U.S.C. § 1983 and 42 U.S.C. § 1988. The Magistrate Judge also suggests Defendants' motion to dismiss be granted as to Plaintiff's SCTCA claim, and that claim be dismissed without prejudice. Because that disposition would dismiss all claims against HCSO, the Magistrate Judge recommends dismissing HCSO from the case. If the Report is adopted, the Magistrate Judge notes the only claim remaining will be Plaintiff's claim under 42 U.S.C. § 1983

and 42 U.S.C. § 1988 against Morales in his individual capacity. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on September 13, 2017, ECF No. 19, but Plaintiff failed to file any objections to the Report. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court Defendants HCSO and Morales in his official capacity are **DISMISSED WITH PREJUDICE** from Plaintiff’s claim under 42 U.S.C. § 1983 and 42 U.S.C. § 1988. Defendants’ motion to dismiss is **GRANTED** as to Plaintiff’s SCTCA claim, and that claim is **DISMISSED WITHOUT PREJUDICE**. Because all claims against it have been dismissed, Defendant HCSO is **DISMISSED** from this action.

IT IS SO ORDERED.

Signed this 3rd day of October, 2017, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE